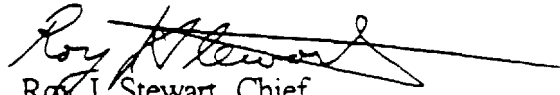


on the pending assignment application. Turro is directed to advise us within 10 days of receipt of this Memorandum Opinion and Order what steps he will undertake to effect compliance with that rule.


Roy J. Stewart, Chief
Mass Media Bureau
Federal Communications Commission

000019

ATTACHMENT E

003020

LAW OFFICES
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WASHINGTON, D.C. 20036

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* SENIOR COUNSEL

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September 2, 1997

Hand Delivered

Alan E. Aronowitz
Suzan B. Friedman
Hearing Branch
Enforcement Division
Federal Communications Commission
2025 M Street, N.W., Rooms 7212 and 8210
Washington, DC 20554

Dear Suzan and Alan:

I realized over the holiday weekend that I forgot to serve copies of the enclosed Option and Amendment of Asset Purchase Agreement among the parties to MM Docket No. 97-122. I rectify that oversight by this distribution.

Best regards.

Sincerely,



Charles R. Naftalin

Enclosures

cc(w/enc.): The Honorable Arthur I. Steinberg (by hand delivery)
James P. Riley, Esq. (by mail)
Richard A. Helmick, Esq. (by mail)

000021

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* SENIOR COUNSEL

August 29, 1997

Hand Delivered

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

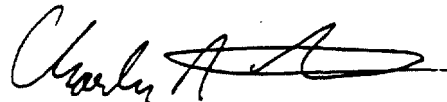
Re: W276AQ, Fort Lee, New Jersey, W232AL, Pomona, New York;
File Nos. BRFT-970129YC, BRFT-970129YD

Dear Mr. Caton:

Transmitted herewith, on behalf of Gerard A. Turro, are three copies of the Option and Amendment of Asset Purchase Agreement, executed July 29, 1997, in connection with the Asset Purchase Agreement before the Commission in the above-referenced application for the assignment of the licenses of W276AQ, Fort Lee, New Jersey, and W232AL, Pomona, New York, from Mr. Turro to Press Broadcasting Company, Inc. The undersigned prepared this filing yesterday and accidentally did not submit it to the Commission. We regret any inconvenience.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,



Charles R. Naftalin

Enclosures
cc(w/enc.): Harry F. Cole, Esq.

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OPTION AND AMENDMENT OF ASSET PURCHASE AGREEMENT

This Option and Amendment of Asset Purchase Agreement ("Amendment") is dated July 29, 1997, by and between Press Broadcasting Company, Inc., a New Jersey corporation ("Buyer") and Gerard A. Turro, a New Jersey resident ("Seller").

P R E M I S E S

A. Buyer and Seller have entered into an Asset Purchase Agreement as of September 6, 1996, pursuant to which Seller has agreed to sell to Buyer, on terms and conditions set forth in the Asset Purchase Agreement, all of Seller's assets used or useful in the operation of either or both of Seller's FM Translator Stations W276AQ, Fort Lee, New Jersey and W232AL, Pomona, New York (collectively, "the Stations"). Unless otherwise expressly provided, capitalized terms herein shall have the same meaning as set forth in the Asset Purchase Agreement.

B. Paragraph 11.5 of the Asset Purchase Agreement provides that the terms of the Asset Purchase Agreement may not be amended, supplemented or modified except by written agreement of the parties.

C. Paragraph 9.1(c) of the Asset Purchase Agreement provides that either party may terminate the Asset Purchase Agreement if a Final Order granting the Assignment Application has not been issued within Twelve (12) Months of the date (i.e., September 6, 1996) on which the Assignment Application was filed with the Federal Communications Commission ("FCC").

D. Applications filed by Seller seeking the renewal of the Stations' licenses have been designated for hearing by the FCC, and the Assignment Application has been held in abeyance by the FCC. Because of these developments, the parties do not presently believe

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that it will be possible to obtain a Final Order granting the Assignment Application prior to September 6, 1997. The parties desire to maintain their relationship pending the outcome of the hearing (notwithstanding the fact that the parties do not now know with certainty what that outcome will be) so that if, at any time during the term of this Option Agreement (including any extension term), the FCC will permit assignment of the Stations' licenses by Seller, the parties will be able to effectuate such assignment without unnecessary delay. Accordingly, the parties desire to amend the terms of the Asset Purchase Agreement, and to provide to Buyer an Option to acquire the Stations, subject to the terms and conditions set forth herein.

A G R E E M E N T

In consideration of the above premises and the covenants and agreements contained herein, Buyer and Seller, intending to be bound legally, agree as follows:

1. Option to Acquire the Stations. Seller hereby grants to Buyer an option ("the Option") to acquire the Stations pursuant to the terms and conditions set forth in the Asset Purchase Agreement (as those terms and conditions are amended hereby).

(a) Initial Option Term. The Option may be exercised by Buyer by giving notice to Seller of such exercise at any time between the date hereof and September 6, 2000 ("Initial Option Term").

(b) Extension Terms. Buyer may extend the Option for Two (2) consecutive one-year terms commencing September 6, 2000 by giving Buyer notice, no less than Thirty (30) Days prior to September 6, 2000, of Buyer's intent to extend the Option for one year. In order to extend the Option for each subsequent one-year term ("Subsequent Extension Term"), Buyer shall give notice to Seller, no less than

003644

Thirty (30) Days prior to the next subsequent anniversary of the expiration of the Option, of Buyer's desire to extend the Option for one year thereafter.

(c) Consideration. Concurrent with the execution of this Amendment and in consideration of the Option through the Initial Option Term, Buyer shall pay to Seller, upon execution of this Amendment, the sum of One Hundred and Fifty Thousand Dollars (\$150,000.00). In consideration of each one-year extension term after the Initial Option Term, Buyer shall pay to Seller at the commencement of each such one-year extension term the sum of Fifty Thousand Dollars (\$50,000.00), which sum shall be tendered to Seller simultaneously with Buyer's notice of Buyer's intent to extend the Option.

2. Rights and Obligations of the Parties upon exercise of the Option.

(a) Upon notice by Buyer to Seller of Buyer's exercise of the Option, except as provided in Subparagraph 2(b) hereof, the parties shall promptly (and in no event later than five calendar days after Buyer's notice of its exercise of the Option) execute the Asset Purchase Agreement as amended hereby, and take all steps necessary to implement the terms of the Asset Purchase Agreement.

(b) If, as of the date on which Buyer gives notice of its exercise of the Option, (i) the authorization of Station W276AQ has been modified by the FCC to "local origination" status as that term is used by the FCC (in contradistinction to the term "translator", in connection with the FM translator service, see, e.g., FM Translator Stations, 5 FCC Rcd 7212 (1990)), including (but not necessarily limited to) authority to originate programming on a full-time basis, and (ii) the Seller is not otherwise precluded by FCC rules, regulations or policies from being the Stations' licensee, the Seller

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may elect to defer implementation of the assignment of the Stations for Twenty-Four (24) months by providing Buyer of such election within five days of Buyer's notice to Seller of the exercise of the Option, provided that, simultaneously with notice of Seller's election to defer implementation, Seller and Buyer shall execute a Time Brokerage Agreement pursuant to which Buyer shall (i) broker no fewer than 162 hours per week of the broadcast time of Station W276AQ and (ii) assist, to the extent permitted by FCC rules, regulations and policies, in the management and operation of Station W232AL, Pomona, New York. The Time Brokerage Agreement shall include terms which are conventional for such agreements in the broadcast industry, and shall specifically provide that programming to be provided on Station W276AQ, Fort Lee, New Jersey, shall, during the term of the Time Brokerage Agreement, include substantial nonentertainment (e.g., news, public affairs) programming and public service announcements specifically directed to matters of local interest in Bergen County and the surrounding service area in northern New Jersey, and entertainment programming which is consistent with, and aimed at the same audience as, the entertainment programming presently rebroadcast on that station. The Time Brokerage Agreement shall provide for payment of a time brokerage fee in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) per year, to be paid in equal monthly payments.

3. Amendment of Asset Purchase Agreement. Paragraph 2.3 of the Asset Purchase Agreement is amended to provide that the purchase price to be paid by Buyer to Seller for the Stations shall be:

(a) One Million Five Hundred Thousand Dollars (\$1,500,000.00), payable as set forth in the Asset Purchase Agreement

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as originally executed, if, as of the Closing Date, both of the Stations are licensed by the FCC as FM translator stations with authorized power of less than 100 watts at each station's respective currently authorized antenna height above average terrain and "secondary" status as that term is used by the FCC in connection with the FM translator service (see, e.g., FM Translator Stations, 5 FCC Rcd 7212 (1990)).

(b) One Million Five Hundred Thousand Dollars (\$1,500,000.00), payable in full at Closing if, as of the Closing Date, Station W276AQ, Fort Lee, New Jersey, continues to have authorized power of less than 100 watts at the station's currently authorized antenna height above average terrain and the station's authorizations have been modified by the FCC to "local origination" status as that term is used by the FCC, in contradistinction to the term "translator", in connection with the FM translator service (see, e.g., FM Translator Stations, 5 FCC Rcd 7212 (1990)).

(c) If, as of the Closing Date, Station W276AQ, Fort Lee, New Jersey, is licensed by the FCC to operate with power of 100 watts or more at its currently authorized antenna height above average terrain with "local origination" status as that term is used by the FCC ("Increased Power/Local Origination Facilities"), in contradistinction to the term "translator", in connection with the FM translator service (see, e.g., FM Translator Stations, 5 FCC Rcd 7212 (1990)), then the parties agree that the purchase price of the Stations cannot now accurately be determined. Accordingly, the parties agree that, no more than Forty-Five (45) days following the date on which Buyer gives notice of its exercise of the Option ("45-Day Negotiation Period"), the parties shall seek to negotiate between

themselves a mutually agreeable purchase price, or a mutually-agreeable mechanism for establishing such a price, for Station W276AQ with Increased Power/Local Origination Facilities. If, at the expiration of the 45-Day Negotiation Period, no such purchase price or pricing mechanism has been agreed to by the parties, then the Fair Market Value ("FMV") of the Stations shall be determined as follows. Within Ten (10) days of the expiration of the 45-Day Negotiation Period, three appraisers shall be selected: one appraiser shall be selected by the Buyer, one appraiser shall be selected by the Seller, and the third appraiser shall be selected (i) by mutual agreement of the Buyer and Seller or (ii) if the Buyer and Seller are unable to agree on the selection of the third appraiser, by mutual agreement of the other two appraisers. The three appraisers shall review all relevant information and shall, on the basis of that review and no more than One Hundred and Twenty (120) days following the original Closing Date, establish the FMV of the Stations and shall promptly notify Buyer and Seller of that FMV. For One Hundred and Eighty (180) days from the date of such notification to Buyer, Buyer shall have the option to acquire the Stations on the terms set forth in the Asset Purchase Agreement, by payment, in cash or cash equivalent at a Closing to be scheduled by Buyer and Seller, of the FMV. If Buyer does not exercise that option within the One Hundred and Eighty day period provided hereby, then Buyer shall have a right of first refusal with respect to the Stations, as follows: If at any time within the first 24 (Twenty-Four) months immediately following the last day of the One Hundred and Eighty day period, Seller receives from a third-party a bona fide offer ("Offer") to acquire either or both of the Stations and Seller wishes to accept such Offer, before it may so

accept Seller must advise Buyer, in writing, of the terms of the Offer. Buyer shall then have the right to acquire the Stations (or Station) on the same terms and conditions as set forth in the Asset Purchase Agreement except that the purchase price and payment terms, if any, shall be as set forth in the Offer. In no event shall the procedure for determining the FMV as set forth in this Subparagraph extend in any way the 18-month time limit for the Time Brokerage Agreement, described in Subparagraph 2(b) hereof, should the Seller elect, pursuant to that Subparagraph, to defer Closing.

(d) In the event that the assignment of the Stations' Licenses occurs pursuant to Section 2.3 of the Asset Purchase Agreement and Subparagraph 3(a) hereof, but within five years of the Closing Date of such assignment Station W276AQ, Fort Lee, New Jersey, is licensed by the FCC to operate with "local origination" status as that term is used by the FCC, in contradistinction to the term "translator", in connection with the FM translator service (see, e.g., FM Translator Stations, 5 FCC Rcd 7212 (1990)), the parties agree that all payments pursuant to the promissory note to be provided by Buyer to Seller pursuant to Section 2.3(d)(ii) of the Asset Purchase Agreement and Paragraph 3 hereof shall be accelerated and shall be due for payment within Ninety (90) days of the date on which the authorization to operate Station W276AQ with such "local origination" status becomes final and no longer subject to any administrative or judicial reconsideration or review.

4. Miscellaneous.

(a) Seller to Prosecute Applications Diligently. Seller shall diligently take all necessary and appropriate steps to obtain favorable action on his applications for renewal of the Stations'

licenses, whether such steps consist of (i) full and active participation in the hearing which has been designated concerning those applications, or (ii) such other steps as may be available to Seller through administrative, judicial or legislative processes.

(b) Notices. Notices shall be given in the manner provided in the Asset Purchase Agreement.

(c) Release of Escrow Payment. Pursuant to Subparagraphs 2.3(a) and 2.3(b) of the Asset Purchase Agreement, Buyer has placed in escrow a total of Twenty-Five Thousand Dollars (\$25,000.00) ("Escrow Funds") to be paid to Seller and credited to the Purchase Price at Closing. Buyer and Seller agree that the Escrow Funds shall be released to Seller upon execution of this Extension and Amendment Agreement and shall be credited to Buyer as part of the consideration for the Option provided in Paragraph 1(c) hereof.

(d) Counterparts. This Amendment may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were upon the same instrument.

(e) No Other Amendment to Asset Purchase Agreement. Other than as is specifically set forth herein, the terms of the Asset Purchase Agreement remain in full force and effect.

(f) Assignment. Neither party hereto may assign this Agreement without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld, and provided also that Buyer may assign its rights and obligations under this Agreement to a wholly-owned subsidiary of Buyer. Seller has been advised that Buyer intends to assign Buyer's rights and obligations, both under the Asset Purchase Agreement and under the instant Option and Amendment, to Press Communications, LLC, and Seller consents to the assignment of

those rights and obligations to Press Communications, LLC. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, this Amendment has been executed by Buyer and Seller as of the date first above written.

PRESS BROADCASTING COMPANY, INC., Buyer

By:

Robert E. McCall

Title:

President

GERARD A. TURRO, Seller

[Signature]

000-31

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Not For Public Inspection

February 15, 1995

VIA HAND DELIVERY

95020241

Mr. Norman Goldstein, Chief
Complaints and Investigations Branch
Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8210
Washington, D.C. 20554

Dear Mr. Goldstein

On behalf of Universal Broadcasting of New York, Inc., licensee of AM Broadcast Station WVNJ, Oakland, New Jersey ("Complainant"), the Commission is hereby requested, pursuant to Sections 1.80, 1.89 and 1.91 of the Commission's Rules, to (a) investigate ongoing and blatant violations of the FM translator rules by Gerard A. Turro ("Turro"), licensee of FM Translator Stations W276AQ, Fort Lee, New Jersey, and W232AL, Pomona, New York, and Aural Intercity Relay Station WMG499, Dumont, New Jersey, and Wesley R. Weis ("Weis"), President, Director and 100% owner of Monticello Mountain Top Broadcasting, Inc., licensee of FM Broadcast Station WXTM, Monticello, New York, and licensee of FM Translator Station W244AS, Oakhurst, New Jersey, (b) impose forfeiture penalties against Turro and Weis and (c) issue an order directing Turro and Weis to show cause why an order of revocation and a cease and desist order should not be issued. In support thereof, the following is set forth.

Complainant/Standing. Complainant requests that its identity be kept confidential by the Commission as Turro and Weis can be expected to mount political pressure and public opinion against any threat to their current operations. Complainant began operating Station WVNJ on December 13, 1993 to provide local broadcast service to Oakland and the surrounding areas of

Federal Communications Commission
Docket No. 97-122 Exhibit No. MMB-2
Presented by fca
Disposition Identified ☒
Received ☒
Rejected ☐

000032

Bergen County, New Jersey.^{1/} WVNJ is the only transmission facility authorized at Oakland, New Jersey and is one of only two commercial broadcast stations licensed in Bergen County, New Jersey.^{2/} As a new station trying to establish itself and provide local service to its community of license and its surrounding service area, WVNJ is severely and adversely impacted by the illegal operations of Turro and Weis which will be detailed below.

Relationship Between Turro and Weis. Turro and Weis were co-owners of FM Translator Station W232AL, Pomona, New York. On October 18, 1994, however, Turro and Weis filed an application (File No. BALFT-941019TC) to assign the license of W232AL solely to Turro; that assignment of license was in consideration of Turro assigning the license of FM Translator Station W244AS, Oakhurst, New Jersey, to Weis (File No. BALFT-941019TD). Presumably, these transactions were made to divest Weis from involvement with FM Translator W232AL, in order to comply with Section 74.1232(e) of the rules, as that translator would be used to rebroadcast the signal of WXTM which was being acquired by Weis.^{3/}

By letter dated November 30, 1994, Turro's engineering firm, Carl T. Jones Corporation, notified the Commission that FM Translator Station W276AQ, Fort Lee, New Jersey, licensed to Turro, was rebroadcasting the signal of Station WXTM, Monticello, New York (see Attachment 2). Although WXTM is a Class A FM facility located approximately 100 km (62 miles) north of the W276AQ transmitter site, no explanation was given as to how the signal of WXTM would be received by W276AQ. Complainant has determined that Turro is providing all or substantially all of the programming being broadcast by WXTM; such programming is being originated by Turro

^{1/} WVNJ is authorized unlimited time operation on 1160 kHz with a power of 2.5 kW nighttime and 10 kW daytime, using a three tower directional antenna system at nighttime and a four tower directional antenna system for its daytime operation; an application (File No. BMP-940819AB) is pending to increase the daytime power of WVNJ to 20 kW using the existing four tower daytime directional antenna system.

^{2/} The other station licensed in Bergen County, New Jersey is WWDJ(AM), Hackensack, New Jersey.

^{3/} WXTM was an unbuilt station when Weis acquired it on October 18, 1994 pursuant to Commission authority granted in Application File No. BAPH-940725GR. Station WXTM was placed in operation pursuant to automatic program test authority on or about October 31, 1994 when an application for license (File No. BLH-941031KD) was filed.

from a studio located at 75 Second Street, Dumont, New Jersey, and transmitted to WXTM by broadcast conditioned telephone lines. Turro's Dumont, New Jersey studio is also listed as a remote control point for WXTM (see page 6 of Attachment 1) and when Howard Warshaw, the Complainant's Vice President, Secretary, Director and 50% owner, called WXTM in Monticello, New York, the call was routed to Turro's Dumont, New Jersey studio and answered by Turro (see statement under penalty of perjury of Howard Warshaw at Attachment 3).

Description of Illegal Operations. FM Translator Station W276AQ, 103.1 MHZ, operates with an effective radiated power of 35 watts and an antenna radiation center above average terrain of 140 meters from a transmission site in Fort Lee, New Jersey. Prior to November 1994, W276AQ rebroadcast the signal of noncommercial educational FM Broadcast Station WJUX, Franklin Lakes, New Jersey; WJUX is licensed to Bergen County Community Broadcast Foundation ("BCCBF"). The principals of BCCBF, a not-for-profit corporation, are Turro and his wife and BCCBF's business address is listed as 687 Orchard Street, Oradell, New Jersey, the residence address of Turro. WJUX (formerly WRRH) operates on 88.7 MHZ and was acquired by BCCF from Ramapo-Indian Hills Regional High School District Board of Education in late 1982 for a purchase price of \$100,000, with \$15,000 down and the balance of \$85,000 to be paid over a ten year period, such balance to be personally guaranteed by Turro in the form of a second mortgage on his residence (see Agreement dated September 21, 1992 and set forth as Attachment 4).

On October 25, 1994, WJUX suspended broadcast operations for the stated reason of alleviating interference caused to and received from co-channel Station WPAC-FM, Wayne, New Jersey; the Commission was notified of such suspension of operations by letter dated November 22, 1994 and authority to remain silent was granted by Commission letter dated December 9, 1994 (see Attachment 5). As noted above, substantially concurrent with the suspension of broadcast operations on WJUX, WXTM began broadcast operations and shortly thereafter the Commission was notified that W276AQ had changed its primary station from WJUX to WXTM.

Set forth as Attachment 6 is an Engineering Report of Cohen, Dippell and Everist which establishes through measurement data that W276AQ is originating, not rebroadcasting, 100% of its program transmissions in violation of Section 74.1231(g) of the Commission's Rules which limits program origination by FM translator stations to no more than 30 seconds per hour. The programming originated on W276AQ is transmitted to the translator station from Turro's Dumont, New Jersey studios via Intercity Relay Station WMG-499 which is a violation of Section 74.1231(b) of the Rules which restricts the use of FM translators for the purposes of rebroadcasting the signals of a primary FM radio station or another translator station which have been received "directly

through space."^{4/} In an effort to camouflage this blatantly illegal operation of W276AQ, Turro is apparently simultaneously transmitting the W276AQ programming to WXTM by broadcast conditioned telephone line; however, it is clear from the Engineering Report that the high quality signal being originated by W276AQ rules out any possibility that the signal of WXTM is being rebroadcast either through direct off-air reception of that station or by relay of the WXTM signal by Translator Station W232AL, Pomona, New York.^{5/}

Turro is doing business as "Juke Box Radio" which is referred to as "your hometown radio station" in promotional material distributed by Turro (see Attachment 6). Set forth as Attachment 7 is a transcript, commissioned by the Complainant, of the commercial and promotional programming broadcast by FM Translator W276AQ from 11:15 a.m. on January 5, 1995 through 11:20 a.m. on January 7, 1995. It will be observed that almost all the commercial programming originated by W276AQ is directed to Bergen County, New Jersey, which is not even within the service area of WXTM. Indeed, Turro's own marketing material (see Attachment 6) refers to WXTM as an "affiliate" of Juke Box Radio - 103.1 FM (the frequency of FM Translator Station W276AQ). In other words, by Turro's own admission, he is operating W276AQ as if it were a primary originating FM broadcast station. WXTM is nothing more than a diversion or camouflage for Turro's blatantly illegal program origination over W276AQ; nevertheless, WXTM is actively participating in this scheme to violate the Commission's Rules and, accordingly, both Turro and Weis' qualifications to continue to be licensees of the Commission are at issue.

This scheme of Turro and Weis to evade and violate the Commission's Rules was not undertaken lightly but, rather, is the product of deliberate action over time. As the facilities of WJUX could not be improved without causing interference to other broadcast stations, Turro either directly or indirectly has attempted to persuade the Commission to permit W276AQ to increase its facilities to either 110 watts nondirectional or 1000 watts directional so that "Juke Box Radio" would have the ability to reach all areas of Bergen County with a strong, clear signal. Turro also lobbied for a waiver of the Commission's Rules to permit W276AQ to originate local programming, thereby avoiding the cumbersome process of originating programming through WJUX in Franklin Lakes,

^{4/} W276AQ is well outside the protected 1.0 mV/m contour of WXTM and does not operate on a reserved channel which would allow it to receive its signal input by means other than off-air reception.

^{5/} Cohen, Dippell and Everist are of the opinion that W232AL is either retransmitting the signal of W276AQ or it too is receiving a direct program feed from Turro's Dumont, New Jersey studio.


Mr. Norman Goldstein, Chief
February 15, 1995
Page 5

New Jersey for rebroadcast by W276AQ, with the inherent technical, programming and non-profit constraints which were imposed by such operation.^{6/}

In anticipation that efforts to improve the signal strength of W276AQ and to obtain a waiver of the original requirements would meet with failure, Turro, as early as January 1991, laid out for the Commission the basic structure of his scheme to evade and violate the Commission's Rules in a request for declaratory ruling to which the Commission responded by letter dated November 19, 1991 (see Attachment 9). Turro's request for declaratory ruling, however, was short on detail and was misleading in describing the relationship between the primary station and the translator as, in this case, the primary station is not financially supporting the translator station but, rather, the translator station is supporting the primary station, as the commercial time is being sold by Turro to businesses operating wholly outside the service of the primary station. This is a classic case of the tail wagging the dog or, more precisely, Turro making a mockery of the Commission's Rules which require that FM translator stations operate as a secondary rebroadcast service and not as a primary originating service.

Conclusion. For the reasons set forth above, the Commission is respectfully requested to expeditiously investigate this complaint, confirm the facts set forth herein, impose forfeitures and penalties against Turro and Weis and issue an order directing Turro and Weis to show cause why an order of revocation and a cease and desist order should not be issued.

Respectfully submitted



Roy R. Russo

Richard A. Helmick

Enclosures

cc: Alan J. Schneider, FCC, Room 408
(w/enclosures)

^{6/} Set forth at Attachment 8, for example is a copy of the Commission's letter of February 10, 1994 to Congresswoman Marge Roukema which addresses the request of a constituent advocating a power increase and waiver of the program origination requirements of W276AQ.

ATTACHMENT 1

FCC 302-FM

COPY
FCC/MELLON OCT 31 1994

FOR
FCC
USE
ONLY

APPLICATION FOR FM

BROADCAST STATION LICENSE

(Please read instructions before completing this form)

FOR MASS MEDIA BUREAU USE ONLY

FILE NO. BLH-941031KD

Section 1 - GENERAL INFORMATION

1. APPLICANT NAME

Monticello Mountaintop Broadcasting, Inc.

MAILING ADDRESS (Line 1) (Maximum 35 characters)

c/o Wesley R. Weis

MAILING ADDRESS (Line 2) (if required) (Maximum 35 characters)

11 Old Tappan Road

CITY

Old Tappan

STATE OR COUNTRY (if foreign address)

New Jersey

ZIP CODE

07675

TELEPHONE NUMBER (include area code)

(201)-387-7700

CALL LETTERS

WXTM (FM)

OTHER FCC IDENTIFIER (F APPLICABLE)

FOR MAILING THIS APPLICATION, SEE INSTRUCTIONS FOR SECTION 1

2. A. Is a fee submitted with this application?

☒ Yes ☐ No

B. If No, select the appropriate box to indicate reason for fee exemption (see 47 C.F.R. Section 1.1112) or reason a fee is not applicable and go to Question 3.

☐ Governmental Entity ☐ Noncommercial educational licensee ☐ Other (Please explain):

C. If item 2.A. is Yes, provide the following information:

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in the "Mass Media Services Fee Filing Guide." Column (B) lists the Fee Multiple applicable for this application. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number listed in Column (B).

	(A) FEE TYPE CODE	(B) FEE MULTIPLE (If required)	(C) FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY
(1)	M H R	0 0 0 1	\$ 135.00	

To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

	(A)	(B)	(C)	FOR FCC USE ONLY
(2)		0 0 0 1	\$	

ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (2), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.

TOTAL AMOUNT REMITTED
WITH THIS APPLICATION

\$135.00

FOR FCC USE ONLY

000038

Section 1 - GENERAL INFORMATION (Page 2)

3. (a) Has an adverse finding been made or an adverse final action taken by any court or administrative body with respect to the applicant or parties to the application in a civil or criminal proceeding, brought under the provisions of any law related to the following: any felony; mass media related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination?

☐ Yes ☒ No

(b) Is there now pending in any court or administrative body any proceeding involving any of the matters referred to in (a) above?

☐ Yes ☒ No

If the answer to (a) and/or (b) above is Yes, attach as an Exhibit a full disclosure of the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), a statement of the facts upon which the proceeding is or was based or the nature of the offense alleged or committed, and a description of the current status or disposition of the matter.

Exhibit No.

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4. For permittees of commercial FM stations only:

Has permittee filed its Ownership Report (FCC Form 323) or ownership certification in accordance with 47 C.F.R. Section 73.3615(b)? See Instructions.

☒ Yes ☐ No
☐ Does Not Apply

The APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against a regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See 47 U.S.C. Section 304.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as set out in full in the application.

CERTIFICATIONS

5. By checking Yes, the applicant certifies that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862, or, in the case of a non-individual applicant (e.g., corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits that includes FCC benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. Section 1.2002(b).

☒ Yes ☐ No

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Name of Applicant Monticello Mountaintop Broadcasting, Inc.	Signature <i>[Handwritten Signature]</i>
Title President	Date 10/28/94

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in this form to determine whether grant of this application is in the public interest. In reaching that determination, or for law enforcement purposes, it may be necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on the form is not provided, processing of the application may be delayed or the application may be returned without action pursuant to the Commission's rules. Your response is required to obtain the requested authority.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. SECTION 552(a)(3).

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SECTION II - TECHNICAL DATA

1. Select one for each item. This application is for a:

(a) ☐ Request for program test authority

☒ Station on automatic program test authority

(b) ☒ Commercial station

☐ Noncommercial station

(c) ☐ Directional antenna

☒ Non-directional antenna

SPECIAL OPERATING CONDITIONS MAY PROHIBIT AUTOMATIC PROGRAM TEST AUTHORITY

2. Call Sign: WXTM

3. Frequency or channel: 259 (99.7 MHz) Class: A

4. Community of License:

City Monticello	State NY
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5. Select one that applies and enter the file number(s) on the appropriate line(s). This application:

(a) ☒ covers a construction permit. Original file number: BPH-910214MD

as modified by: BMPH-920214IC

as extended by: BMPH-931206JD & BMPH-940818JA

as replaced by: _____

(b) ☐ modifies a license, file number: _____

6. Is this application being filed pursuant to MM Docket No. 88-375 (Class A Upgrade)? See instructions.

☐ Yes ☒ No

If YES, attach the supplemental Exhibit to this application.

Exhibit No.
N/A

IF YOU SELECTED 5(b), "MODIFIES A LICENSE," PROCEED TO ITEM 8.

7. Expiration date of construction permit:

Month 4	Day 14	Year 95
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THIS APPLICATION MUST BE ON FILE WITH THE COMMISSION BEFORE THE EXPIRATION DATE OF YOUR CONSTRUCTION PERMIT. SEE INSTRUCTIONS.

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8. Description of facilities authorized by the construction permit or license noted in item 5(a) or 5(b).

(a) Antenna coordinates:	<u>41</u> ° <u>45</u> ' <u>9</u> " N. Lat.	<u>74</u> ° <u>43</u> ' <u>1</u> " W. Lon.
	Horizontal	Vertical
(b) Effective radiated power:	<u>6.0</u> kW	<u>6.0</u> kW
(c) Beam tilt effective radiated power (if applicable):	<u>N/A</u> kW	<u>N/A</u> kW
(d) Radiation center above ground:	<u>72</u> meters	<u>72</u> meters
(e) Radiation center above mean sea level:	<u>544</u> meters	<u>544</u> meters
(f) Antenna height above average terrain:	<u>91</u> meters	<u>91</u> meters
(g) Overall tower height above ground (including antenna, all other appurtenances, and lighting, if any):	<u>86</u> meters	

9. Description of facilities as constructed:

(a) Antenna coordinates:	<u>41</u> ° <u>45</u> ' <u>9</u> " N. Lat.	<u>74</u> ° <u>43</u> ' <u>1</u> " W. Lon.
	Horizontal	Vertical
(b) Effective radiated power:	<u>6.0</u> kW	<u>6.0</u> kW
(c) Beam tilt effective radiated power (if applicable):	<u>N/A</u> kW	<u>N/A</u> kW
(d) Radiation center above ground:	<u>72</u> meters	<u>72</u> meters
(e) Radiation center above mean sea level:	<u>544</u> meters	<u>544</u> meters
(f) Antenna height above average terrain:	<u>91</u> meters	<u>91</u> meters
(g) Overall tower height above ground (including antenna, all other appurtenances, and lighting, if any):	<u>86</u> meters	

10. Are there any differences between the facilities described in item 8 and those in item 9?

☐ Yes ☒ No

IF YES, YOU MAY NOT BE ABLE TO USE THIS FORM. SEE INSTRUCTIONS.

Attach an Exhibit explaining in detail how these differences occurred.

Exhibit No.

N/A

11. Attach an Exhibit that demonstrates compliance with the special operating conditions, terms, and obligations described in the construction permit.

Exhibit No.

*

☐ Does Not Apply

*See Engineering Statement.

CONVERSION TO AND FROM METRIC:

METERS = 0.3048 X FEET

FEET = 3.281 X METERS

000041

12. Antenna description:	Make Cablewave	Model Number CFMLP-3	Number of Sections 3	Power Gain 1.50
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If the antenna utilizes beam tilt, null fill, reduced spacing (less than one wavelength) between bays or the antenna is directional or specialized, an Exhibit must be attached. SEE INSTRUCTIONS.

Exhibit No. N/A

13. Transmission line system description:

(a) Transmission line:	Make Cablewave	Model Number HCC158-50	Length in Meters 79.25 meters
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(b) Percent efficiency of entire transmission line system: 89.5 %

If any losses are included in 13(b) other than the loss of the transmission line listed in 13(a), attach an Exhibit detailing these additional losses. See Instructions.

Exhibit No. N/A

14. Transmitter power output (in kilowatts): 4.47 kW

SEE INSTRUCTIONS TO CALCULATE TPO.

15. Operating constants:

(a) D.C. plate current in last radio stage (amperes): 1.165 A

(b) Applied D.C. voltage in last radio stage (volts): 5,400 V

(c) Efficiency of transmitter at operating power (percent): 71 %

(d) RF transmission line meter reading (percent): 100 %

SEE INSTRUCTIONS TO CHECK OPERATING CONSTANTS.

16. Is the main studio within the 3.16 mV/m (70 dBu) field strength contour of the main facility?

☒ Yes ☐ No

If NO, attach an Exhibit pursuant to the Instructions.

Exhibit No. N/A

17. Location of Main Studio: (P.O. BOXES ARE UNACCEPTABLE)

Street Address or Location Description Old Route 17		
City Ferndale	County Sullivan	State NY

CONVERSION TO AND FROM METRIC:

METERS = 0.3048 X FEET

FEET = 3.281 X METERS

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